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Supreme Court of the United States

OCTOBER TERM, 1939

No. 271

PARAMINO LUMBER COMPANY, a Corporation, and UNION INSURANCE SOCIETY OF CANTON, LTD., a Corporation, *Appellants*,

vs.

WM. A. MARSHALL, Deputy Commissioner, Fourteenth Compensation District Under the Longshoremen's and Harbor Workers' Compensation Act, and JOHN T. CLARK, *Appellees*.

IN ADMIRALTY
(Consolidated Cases)

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON

BRIEF OF APPELLEE JOHN T. CLARK

OSCAR A. ZABEL,
EDWIN J. BROWN, SR.,
Counsel for Appellee John T. Clark.
1001 4th & Pike Building,
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BRIEF OF APPELLEE JOHN T. CLARK

SUMMARY OF ARGUMENT

I. Motion to Dismiss for Want of Jurisdiction:

1. The case on the merits shows (a) that the workman suffered from malpractice by the appellants' physician so as to conceal the true condition of his

disability from both the workman and the Deputy Commissioner, resulting in the order of award of August 26, 1931; (b) that the workman did not act within the time for appeal or reopening during the term of award because he was thus misled; (c) that he did complain of his condition persistently after the order of August 26, 1931, and the Deputy Commissioner continued investigation into his case.

2. That the Deputy Commissioner actually exercised continuing jurisdiction over the workman's claim until the last award of March 13, 1939.

3. That a liberal construction of Section 22, of Federal Statute of March 4, 1927, Chapter 509 Laws of 1927, 44 Stat. 1437, requires a holding that under the facts here shown the award to the workman was proper and lawful because the terms of the act necessarily contemplate knowledge of the true facts by the workman before he can make application for reopening for change in his condition, and does not contemplate barring cause when the Deputy Commissioner continues to investigate the claim after his final order, at the instance of the workman.

4. That such a liberal construction of Section 22 supported by all available authority, precludes the necessity of passing on the validity of Act No. 445, which is assailed by appellants. The act becomes merely an effort to protect the workman under the mistaken apprehension that his rights were terminated.

II. Answer to Point A of Appellants' Brief.

1. There is a distinction sustained by competent authority between the Fourteenth Amendment and the Fifth Amendment. The former does not apply to congressional legislation and is not applicable to the act assailed.

2. The contention that Clark is accorded a special privilege over other employees is not sustained since the entire case shows an effort merely to allow him rights accruing from his original injury in accordance with the act providing compensation. In any event, appellants cannot suffer injury *to themselves* from such claimed discrimination and have no standing as complaining parties.

III. Answer to Point B of Appellants' Brief.

1. There was no right in appellants by reason of the order of August 26, 1931, upon which Congress could not legislate, since the subject matter of limitation of remedy is procedural and no substantive rights were affected, and (a) the policy favoring compensation to injured workmen transcends the policy for limiting time of remedy; (b) Clark's substantive rights are merely secured by the Act which extends the time; (c) the defense of statute of limitations does not create a vested substantive right in appellants; (d) but is a subject within the control of the law-making body.

2. Due process is accorded by the very terms of Act No. 445 and preservation of rights as to prior orders.

3. Under the weight of authority, the Act No. 445 is entitled to liberal construction as remedial legislation and to the presumption of validity. All doubts must be resolved in favor of its constitutionality.

ARGUMENT

MERITS OF THE CASE

"Courts will not anticipate a question of constitutional law in advance of the necessity of deciding it."

Paramino Lumber Co., et al., v. Wm. A. Marshall, et al., 95 Fed. (2d) 203, 206.

The award made to the appellee in this case should be sustained under the provisions of the Longshoremen's and Harbor Workers' Act, irrespective of the question of the constitutionality of the separate act here being assailed. It is only necessary to discuss the salient facts surrounding appellee's total disability as found by the Deputy Commissioner of the Employees' Compensation Commission charged with the administration of the Longshoremen's and Harbor Workers' Act to support this contention. Typical of appellants' brief in several instances, they have omitted from the Statement of the Case, commencing at page 5 of their brief, the important fact that the workman, Clark, at the time of the order of award on August 26, 1931, *was not aware* of the malpractice to which he had been subjected by appellants' physician, and was given to understand that his physical injuries had been properly treated. Claimant suffered a severe fracture of one rib and during the surgical operation a healthy and uninjured rib was

removed; that following the operation claimant was sewed up, and the fragmented, torn and damaged rib was permitted to remain in appellee's body. Thereafter an award was made to claimant based upon said medical treatment, closing his claim and subsequently, and after the time in which claimant could resort to the remedy of appeal from the commissioner's award, claimant was advised from independent x-rays taken, that he had, in fact, been given no treatment for the actual injuries sustained, but had in fact been more greatly injured by reason of the unnecessary operative treatment performed.

The commissioner, in his final award of March 13, 1939, found

> "That as a result of the injury sustained the claimant was wholly disabled from January 17, 1931, to and including January 5, 1939 * * * that the total disability of the claimant continued at the time of the hearing on January 5, 1939, * * * that the employer and insurance carrier shall furnish claimant with such medical, surgical and hospital treatment as may be appropriate to the further treatment and cure of his disability." (R. 18)

Thus it can be seen that as a result of the injury, *claimant was totally disabled at the time of the first order of award and* that that *total disability has continued to this day* due to the malpractice of the company's physician and the dependence by the deputy commissioner upon the mistaken conclusion reached by the physician. At this juncture, it is well to refer to the Report of the Senate Committee on Claims,

Report No. 1645, Calendar No. 1711, 74th Congress—2nd Session (R. 5, 25), which in part states as follows:

> "However, evidence of the claimant's present and past continuing disability is given by physicians and others, and it appears that the claim of malpractice by the company physician and of lack of due care of the claimant's interests by the deputy commissioner has been sustained. It is clear that Clark is at the present time hopelessly crippled and without compensation as a result of the foregoing, and we can see no objection to this bill, as amended, which gives the permission and authority of Congress for a review of the case by the Employees' Compensation Commission, the body charged with the administration of the Longshoremen's and Harbor Workers' Act." (Appendix 13, 18, Appellants' Brief)

As disclosed by his letter of September 6, 1934 (Appendix 27, Appellants' Brief), the Deputy Commissioner, Wm. A. Marshall, District 14 of the United States Employees Compensation Commission, found that,

> "No appeal was taken from the order filed (Aug. 26, 1931), and Mr. Clark visited me from time to time and claimed that disability persisted. Ten months later I learned that he had an operation by Dr. H. T. Wyckoff on November 30, 1931, on the eleventh rib. This was long after my jurisdiction over the case had ceased."
>
> "Mr. Clark continued to visit me relative to his disability, and then in the summer of 1933 you (Congressman Zioncheck) took up this case with me and, notwithstanding I had no author-

ity to take any formal action in the matter, I conferred with Dr. Bates and the specialist who had examined Mr. Clark for the County Hospital, the *purpose being* to ascertain if any additional surgical care promised to improve the condition. I concluded that no additional operation was indicated and that the case had developed into one of neurosis."

"Obviously, Mr. Clark is not a malingerer, or he would not have submitted to two operations and be willing to undergo an additional operation. His complaints of pain and disability have been so persistent that I was forced to conclude that as a result of all the circumstances he had become neurotic and the *original injury* is responsible for his condition." (Parenthesis supplied)

Thus it is a fact that the Deputy Commissioner, in spite of his order of August 26, 1931 (R. 13), has not only been continuously informed by claimant of his total disability, but has actually from time to time in the furtherance and performance of his duties as deputy commissioner, interested himself in ascertaining what further medical treatment was necessary, and on November 22, 1938, commenced a hearing in accordance with all the rules and provisions of the Longshoremen's and Harbor Workers' Act, for the review of the previous award, and concluded said hearing on January 5, 1939, and on March 13, 1939, gave a further award of compensation because of claimant's continued total disability from January 17, 1931, to January 5, 1939 (R. 17).

In this further award the appellants were credited with all compensation previously paid claimant, and the further award was nothing more than the continuance of the compensation from the point where claimant was improperly cut off because of the malpractice involved. It is therefore evident that as a matter of right, the further award to claimant was nothing more than what claimant was at all times entitled to. It is also evident that the Deputy Commissioner maintained a continuing jurisdiction in claimant's case in the proper performance of his duty to award compensation to those workmen who are entitled to that relief under the Longshoremen's and Harbor Workers' Act.

In determining whether under the above facts, and irrespective of any statute passed in 1936 for his relief claimant is entitled to the compensation awarded for his continuing total disability under the Longshoremen's and Harbor Workers' Act of March 4, 1927, we must predicate our analysis upon the salutary principle that the original and primary legislation which brought into existence the Longshoremen's and Harbor Workers' Act, was and is essentially, basically and fundamentally remedial legislation. The law applicable to the Longshoremen's and Harbor Workers' Compensation Act is distinct in itself and the Federal Courts throughout the nation properly interpret said legislation liberally in favor of the longshoremen to effect its object to award compensation for actual disabilities, partial and total. Furthermore, a reasonable construction is placed

upon it to do justice and avoid wrong, and all doubts in connection with its administration are resolved in favor of the longshoreman.

The following cases support the sound principle of labor law that the Longshoremen's and Harbor Workers' Act must be *liberally construed in favor of the injured employee seeking compensation*, the law being remedial in character:

General Accident, Fire and Life Insurance Corp. v. Crowell, Dep. Comm., 76 Fed. (2d) 341;

Kropp v. Parker, Deputy Commissioner, 8 Fed. Supp. 290;

DeWald v. Baltimore & Ohio R. Co., 71 Fed. (2d) 810;

Southern Shipping Co. v. Lawson, 5 Fed. Supp. 321, 323;

Standard Accident Insurance Co. v. Hoage, 66 Fed. (2d) 275.

A claimant is entitled to liberal construction of the Longshoremen's Compensation Act and doubts should be resolved in his favor.

Southern S. S. Co. v. Norton, 101 Fed. (2d) 825;

Eastern S. S. Lines v. Monahan, Inc., 26 Fed. Supp. 944, 947.

In August, 1931, when the award was made to Clark the statute in force governing review of awards was Sec. 22, Chap. 509, Laws of 1927, 44 Stat. 1437, providing that

"Upon his own initiative, or upon application

of any party in interest, on the ground of a change in conditions, the deputy commissioner may at any time during the term of an award and after the compensation order in respect of such award has become final, review such order in accordance with the procedure prescribed in respect of claims in Section 19, and in accordance with such section issue a new compensation order which may terminate, continue, increase or decrease such compensation. Such new order shall not affect any compensation paid under authority of the prior order."

This section was amended May 26, 1934, subsequent to the order of August, 1931, but essentially it is the same type of statute limiting the review to a specific period after the final order is extended. The more recent cases interpreting the amended provision are, however, strongly persuasive in determining the construction to be given to the original section in the light of the foregoing facts.

Such amended provision of the Longshoremen's and Harbor Workers' Compensation Act authorizing review of compensation cases for change in conditions or mistake in determination of facts is a remedial statute which must be liberally construed. *Bethlehem Shipbuilding Corp. v. Cardillo*, 102 Fed. (2nd) 299, affirming 23 Fed. Supp. 400. In the cited case claimant was injured under the old Longshoremen's and Harbor Workers' Act. Subsequently, an amendment was passed stating that within a year, on account of change in conditions or because of a mistake in the determination of fact by the deputy commissioner, he

may, at any time prior to one year after date of last payment of compensation, review a compensation case. The commissioner made an award thereafter (101 Fed. (2nd) 254) to the workman and the appellants claimed it was contrary to law since the workman was injured and award made to workman before passage of amendment and therefore did not apply to him. The commissioner, after hearing, found total disability. The Court stated:

> "Sec. 22, as amended, is a remedial statute and calls for liberal construction;"

In the above case Certiorari was denied. 59 S. Ct. 1042.

The above case also is reported in 23 Fed. Supp. 400, wherein the court cited *Independent Pier Co., et al. v. Norton, Dept. Com. D. C.*, 12 Fed. Supp. 974, *ante.*

In *Cardillo, Dep. Com., et al. vs. Liberty Mutual Insurance Co.*, U. S. Circuit Court of Appeals for the District of Columbia (1938), 101 Fed. (2nd) 254, 255, the following appears:

> "The same conclusion follows from the principle that compensation acts are to be 'construed liberally in furtherance of the purpose for which they were enacted.' *Baltimore & Philadelphia Steamboat Co. v. Norton*, 284 U. S. 408, 414; 52 S. Ct. 187, 189; 76 L. Ed. 366."

Rothschild & Co., Inc., v. Marshall, D. C. Wash. 1930, 47 Fed. (2nd) 919, states:

> "The Longshoremen's and Harbor Workers'

> Compensation Act *is to be reasonably construed to effect its object to award compensation for actual disabilities, partial and total;* to that end the commissioner is authorized to hold as many hearings as conditions require (Sec. 22) * * * "And that reasonable construction to do justice and avoid wrong which all *ambiguous statutes, orders, judgments,* and decrees should have, if possible, should construe the direction to 'proceed accordingly' to intend that the Commissioner should take the only official action open to him, *viz*: Rehearing and an order 'in accordance with law.' *Doubts should be resolved in favor of the longshoreman rather than the insurer.*"

In *Crabb v. Department of Labor and Industries,* 186 Wash. 505; 58 Pac. (2nd) 1025, the workman filed claim for injured ankle and award was made and claim closed. No appeal was taken and no other claim filed within the one year limitation. After year expired claimant filed claim for injury to neck which developed but was traceable to original injuries. This was due to the fact that claimant had no way of knowing before the expiration of the statutory time that his injury to his neck would disable him. The Supreme Court of the State of Washington at page 512 held as follows:

> "Having in mind the well known spirit and purpose of our industrial insurance act, we feel impelled to adopt the liberal view announced by the Supreme Court of Oklahoma.
>
> "It follows the department should have entertained the claim."

The late Mr. Justice Butler, speaking for the Court

in *Baltimore & Philadelphia Steamboat Co., et al., v. Norton, Deputy Commissioner, et al.*, 48 Fed. (2nd) 57; 284 U. S. 408, at 414, said:

> "The measure before us (Longshoremen's and Harbor Workers' Act) like recent similar legislation in many states, requires employers to make payments for the relief of employees and their dependents who sustain loss as a result of personal injuries and deaths occurring in the course of their work, whether with or without fault attributable to employers. Such laws operate to relieve persons suffering such misfortunes of a part of the burden and to distribute it to the industries and mediately to those served by them. They are deemed to be in the public interest and should be construed liberally in furtherance of the purpose for which they were enacted and, if possible, so as to avoid incongruous or harsh results. *Jamison v. Encarnacion*, 281 U. S. 635, 640." (Parenthesis supplied)

Thus, it can be seen, and rightly so, that any portion of the remedial statute which is designed to cut off the rights of the workman, must necessarily be construed liberally, if the act is capable of being construed at all, in favor of the spirit and intent of the Longshoremen's and Harbor Workers' Act—namely, to award compensation to those entitled to same. In the instant case it is clear that if the workman knew of his injuries and was in no way misled to his detriment, the act will foreclose his attempt to reopen for further consideration. A construction, however, which protects workmen not aware of the character of their injuries and who by malpactice or

otherwise are misled as to the nature of their injuries, would be in harmony with the spirit and intent and principal aims of the entire compensation act, and yet not prohibited by the language of Sec. 22, Chapter 509 Laws of 1927, 44 Stat. 1437, or the amended Sec. 922 of Title 33 U.S.C.A. (52 Stat. 1167). The facts of the instant case are such as to justify a construction of the section excepting therefrom cases *where the workman is unaware of the nature of his injuries at the time of the award.* Such a construction is reasonably drawn from the language which reads that "upon application of any party in interest" the case may be reopened.

For it goes without saying that such application can only be made *with a knowledge of the facts* (at least to the extent that a layman may have them) of the "change in conditions" mentioned. Certainly the statute cannot apply when the facts show a continuing jurisdiction exercised by the Deputy Commissioner at the workman's request.

In the case of *Kropp v. Parker, Dep. Com'r., supra,* 8 Fed. Supp. 290, the Longshoremen's and Harbor Workers' Act was construed liberally in favor of the workman and compensation was awarded him even though the workman had not filed his claim within the statutory limitation period, the court stating in part in the syllabus as follows:

> "Claim for compensation under Longshoremen's and Harbor Workers' Act, held not barred by limitation where *neither employee nor em-*

ployer was aware of latent injury which was discovered June 3, 1933."

The court in the above case also reviews many decisions and concludes that the weight of authority is in harmony with the above reasonable construction, and states:

> "It is also clear that the Act should be liberally construed."

In the case of *Union Stevedoring Corp. and Liberty Mutual Insurance Co. v. Norton, Deputy Com'r.*, 98 Fed. (2d) 1012 (1938) the longshoreman was injured in 1929, and an award was made in 1931. About 5½ years after the injury and several years after the claim was considered closed, claimant

> "Filed an application with the deputy commissioner for further medical, surgical and hospital treatment *on account of his continuing injury.*"

The Deputy Commissioner, in part, found

> "That a condition causing pain and disability still exists resulting from the injury of December 8, 1929,"

and the deputy commissioner ordered

> "that the employer and insurance carrier furnish claimant with appropriate medical, surgical and other attendance or treatment for the relief of the condition from which the claimant is now suffering."

Various technical contentions were made by appellants and appellee, and the court, at page 1016, aptly disposed of these contentions as follows:

> "Further reference to the contentions of the respective parties would be fruitless. *It is our duty to construe the act liberally* and in such wise as to effect the purpose intended by Congress. *Baltimore & Phila. Steamboat Co. v. Norton*, 284 U. S. 408, 414; *Jamison v. Encarnacion*, 281 U. S. 635, 640.
>
> "The Longshoremen's and Harbor Workers' Act, 33 U.S.C.A., Sec. 901 *et seq.*, is intended to afford relief to persons who incur injuries in the course of that employment."

If the position of appellee is correct, then there is no constitutional question before this court for decision, and the appeal should be dismissed for want of jurisdiction of this court.

As was aptly stated by Justice Reed, speaking for the Court in the recent case of *Driscoll v. Edison Light and Power Co.*, Vol. 307 U. S. No. 1, page 104, Official Reports of the Supreme Court, at page 115:

> "This course observes the very salutary rule that 'this court will not decide an issue of constitutionality if the case may justly and reasonably be decided under a construction of the statute under which the act is clearly constitutional.'"

Citing

300 U. S. 55, 75 to 76;
275 U. S. 142, 148;
264 U. S. 298, 307;
258 U. S. 204, 217.

And, as stated by Chief Justice White, speaking for the Court in *Easterling Lumber Co. v. Pierce*, 235 U. S. 380, where

"The objection to the second statute is that it was wanting in due process because retroactively applied to the case, since the statute was enacted after the accident occurred. But the court below held that the statute cut off no substantive defense, but simply provided a rule of evidence controlling the burden of proof. That as thus construed it does not violate the 14th Amendment to the Constitution of the United States is also so conclusively settled as to again require nothing but a reference to the decided cases."

and further that

"It had been conclusively settled by the decisions of this court that both grounds relied upon were devoid of merit, we think the alleged constitutional questions were too frivolous to sustain jurisdiction and we therefore maintain the motion which has been made to dismiss, and our judgment will be: Dismissed for Want of Jurisdiction."

In view of the foregoing, motion is hereby made by the appellee for dismissal of appellants' appeal for want of jurisdiction.

ANSWER TO APPELLANTS' BRIEF

From a reading and study of appellants' brief, it is at once apparent that the appellants have studiously ignored and disregarded the Federal cardinal rules applicable to Longshoremen's and Harbor Workers' legislation, that said act shall be interpreted liberally in favor of the longshoremen and that all doubts and technicalities shall be resolved in favor of the longshoremen. In direct disregard of these settled and adjudicated principles and in disregard

of the fact that this legislation is fundamentally remedial legislation, appellants have adopted a hypertechincal position with the obvious objective of defeating the purposes of awarding compensation to those properly entitled thereto. However, from the maze of decisions and arguments set forth by appellants in their brief, their contentions can be simmered down to three points, viz:

Point A: The Act granting relief to Clark gives him privileges not accorded to other longshoremen, and denies the equal protection of the laws to appellants.

Point B: It deprives appellants of property without due process by destroying a vested property right based on the compensation order in favor of Clark.

The last point, C, merely gives illustrative decisions construing State statutes allegedly similar.

Answer to Point A—Equal Protection

Although in the foregoing appellants clearly differentiate between the denial of their rights under the equal protection of laws (Point A), and their being deprived of vested rights in violation of due process of law (Point B), they labor by citation of authorities to show that "due process of law" and "equal protection of laws" mean one and the same thing.

The device used to arrive at this conclusion is the seizing of excerpts torn from the text of various decisions as a basis for a confusion of the two. Many cases are cited which state that the words "due process" in the Fifth Amendment are identical in

meaning with the same words in the Fourteenth Amendment. Other loose language is quoted which gives broad definition to the words "due process."

The distinction, however, between the two, has been pointed out by appellants in the cited case of *Truax v. Corrigan*, 257 U. S. 312, 331, 332, 66 L. ed. 254:

> "This brings us to consider the effect in this case of that provision of the Fourteenth Amendment which forbids any state to deny to any person the equal protection of the laws. The clause is associated in the amendment with the due process clause and it is customary to consider them together. It may be that they overlap, that a violation of one may involve at times the violation of the other, *but the spheres of the protection* they offer *are not coterminus.*" (Our italics)

Reference to page 34 of Appellants' Brief will show that appellants have inserted three asterisks to follow the above quoted portion of the decision, and *what follows* is apparently not in accord with appellants' argument, *so is omitted* by appellants. Appellee, therefore, now quotes the omitted portion:

> "The due process clause, brought down from Magna Charta, was found in the early state constitutions, and later in the Fifth Amendment to the Federal Constitution as a limitation upon the executive, legislative, and judicial powers of the Federal Government, *while the equality clause does not appear in the Fifth Amendment and so does not apply to congressional legislation.*"

The more recent case of *Independent Pier Co. et al.*

v. Norton, Deputy Commissioner, 12 Fed. Supp. 974, confirms the settled rule of this court that the inhibition against states does not apply to Congress, and this case involves the Longshoremen's and Harbor Workers' Act and is quoted from as follows:

"SUPPLEMENTAL OPINION

"Since writing the above we have been favored with a supplementary brief on behalf of the plaintiffs which discusses with marked ability a phase of the above case which we did not have in mind in formulating the conclusions above stated. This feature is brought out by a comparison of the following dates:

March 3, 1934. Monahan order made.

April 2, 1934. This order under the provisions of the then law became final.

May 26, 1934. Amendment providing for the opening of proceeding within one year (33 U.S. C.A., Sec. 922).

"The point made is that the amendment does not apply to orders which had become final before the passage of the amending act.

"The propositions advanced are:

(1) The Monahan order became final nearly two months before the amended act was passed.

(2) Thereafter the employer had in the order what is called "a vested right."

(3) The act does not apply to proceedings which had been concluded and the order in which had become final before the act was passed.

(4) If it does apply, it is unconstitutional under the Fifth Amendment to the Constitution of the United States.

"Under the law as it then was, it must be conceded that the award was not only final in the appellate sense but it had become a finality. If the law had not been amended, neither the commissioner himself nor his successor had jurisdictional power to reopen the case after April 2, 1934. Just what is meant or gained by ascribing to a debtor a vested interest or a property right in the debt he owes is not altogether clear. It is intelligible enough to say that the employer's money is his property and that he cannot be deprived of it without due process of law.

"This plaintiff has been deprived of some money by one order of the commissioner, and it is proposed to deprive it of more by another order. It is not denied that the first deprivation was in pursuance of due process of law. The sole question is whether the second is also. If the amendment of 1934 has no application, the second award was not due process. It must likewise be conceded that retroactive laws, like *ex post facto laws*, are thought by many people to be unjust. The former, however, may be classed as in line with due process of law, although the latter may not be. It must likewise be conceded that in deference to the general judgment of their injustice laws are not given a retroactive effect unless such be their real meaning. The question then is whether this law was meant to apply to this kind of a case. This case is clearly within its veribage. The act is not limited to cases thereafter arising because it applies to cases

'whether or not a compensation order has been issued,' and as a year's time is given for the reopening, it must necessarily extend to cases in which the order is older than thirty days. There is, moreover, a distinction between an appeal or review of an entered order, and a reopening of the proceeding in which the order was made. The first challenges judgment of the order on the facts and the law as of the time when made; the second proceeds upon a new state of facts brought to light a year or more after the order was made and results in a new order. The difference is that between the allowance of an appeal and the granting of a new trial. The first was limited, and still is, to thirty days; the latter has a much longer time. The reopening review is allowed of any case, and this means the instant case.

"*The argument is thus reduced to that of the unconstitutionality of the act.* We assume the taking of property without just compensation provision does not apply. *What is relied on is the due process clause. No state can pass an act which impairs the obligation of debt. The inhibition does not apply to Congress.* What the law does is to lend its aid to the enforcement of a claim of debt. It may impose such conditions as are deemed wise. Among those imposed are limitations of time within which an action may be brought and after which it cannot. *The amendment in question is a mere extension of the time.* The old act limited the reopening, among other things, to the time of 'the term of the award.' The amended act substitutes the year limit. The old act, however, allowed it 'after compensation order had become final.'

"The cited cases which were ruled before the act have no application nor the cases which refer to an appeal review as distinguished from an application to reopen.

"We adhere to the conclusion before reached *that the commissioner had the jurisdictional power to reopen the order which had before been made.*"

Again, it is stated that the "equal protection of the laws" clause under all of the authorities is a clause involving the 14th Amendment and it is elementary that the Fourteenth Amendment applies to state action only and not to the Congress of the United States.

In this connection it may be stated that with reference to the Fourteenth Amendment and the making of arbitrary class distinctions, and the equal protection clause, the rule is set out in 12 Corpus Juris, page 1130, as follows:

"The constitutional provisions referred to prohibit only *state action* in making of unreasonable or arbitrary class distinctions and *do not* prohibit action by Congress or by individuals."

Thus, it can be seen that Congress is not limited in the manner that the states are limited.

In 6 R.C.L., Sec. 234, p. 248, the amendments to the federal constitution are discussed and the rule is stated that:

"The Fourteenth Amendment prohibited the *states* from abridging the privileges or immuni-

ties of citizens of the United States, by depriving them of life, liberty or property without due process of law, and from denying to any the equal protection of the laws."

Also, it states:

"*Under the Fourteenth Amendment*, it has power to counteract and render nugatory *all state laws* and proceedings which have the effect to abridge any of the privileges or immunities of the citizens of the United States, or to deprive them of life, liberty or property without due process of law, or to deny to any of them the *equal protection of the laws.* These Thirteenth and Fourteenth Amendments were intended to be what they really are, *limitations of the power of the states* and *enlargements* of the *power of Congress.*"

In 6 R.C.L., Sec. 261, p. 279, the rule is stated as to the Fourteenth Amendment:

"In other words, the object of the Fourteenth Amendment was to prevent an exercise of the independent power left to each *state* in favor of its own citizens in respect to their common personal rights as citizens and against a participation in the same rights by citizens of other states."

No decision of this court has been cited which merges the Fifth and Fourteenth Amendments in the manner argued by appellants.

The next contention under Point A is that Clark is accorded special privileges not accorded to other longshoremen. Of course, even were this true, appellants are not in a position to complain that their

rights are affected by such a claimed discrimination, and if they rested the case upon this ground, their standing in this court would be seriously questioned. All of the equal protection cases cited by appellants contemplate substantive rights. Not a single case cited in Point A of the brief deals with a situation like the one presented in this case because they deal with substantive rights. The instant case deals with *remedy* only. They say this law confers benefits on one and selects appellants for all burdens and exhausts itself upon the parties to this litigation alone. But no new benefits are conferred; no new burdens are imposed. It simply extends the time within which the right to apply for benefits on the one hand can be pursued, and on the other hand, extends the time within which the appellants must come in and defend or present any defenses on the merits that were available not based upon the lapse of time.

Answer to Point B—Due Process

Under this point, beginning at page 38 of appellants' brief, appellants first cite the only two cases which they contend show an attempt by Congress to determine property rights of private individuals. *Jones v. Meehan*, 175 U. S. 1, 44 L. ed. 49 (1899) first cited involves an effort by Congress by resolution to authorize the Secretary of the Interior to deal with property which by treaty made with the United States, was transferred to an Indian Chief. The case involved no labor compensation act, no statute of limitation, no attempt to suspend the bar by extension of time. It is neither analogous nor remotely in point.

The appellants cite the case of *Pocono Pines Hotel Co. v. U. S.*, 73 C. Cla. 447 (1932) on page 39 of their brief, where an act of Congress remanded the case to the Court of Claims for further investigation of the facts. If anything, such an act would support the act here attacked, but appellants boldly quote that portion of the decision of the Court of Claims which discusses an act which was *not passed nor before the court.* This is typical of the "persuasive" authority cited by counsel for appellants, since any authority sustaining their contention is not available.

However, it is noteworthy that even in the quoted dicta, on page 41 of appellants' brief, the position of appellants crumbles:

> "*Congress has frequently waived by special act defenses* which were available to the United States in the prosecution of claims in this court. Suits of Indian tribes invariably involve the *statute of limitations* and legal and equitable rights. Numerous cases, quite too many to cite, may be found in the reports of the court where Congress impressed with the equitable justice of the plaintiff's demand, and *convinced that save for technical defenses the plaintiff would have recovered judgment, has waived the same by special act* and the cases have been adjudicated by this court under such acts." (Italics ours)

The act assailed in the case at bar is no more than a suspension of the bar of limitations, a procedural device for terminating litigation as promptly as possible. *But a policy to terminate litigation promptly is transcended by the policy of the original act to*

allow compensation to workmen wherever a liberal construction of the act will permit.

Nor is the compensation order of August 26, 1931, such an order as vests any property right in appellants. For by the express terms of the act the order is subject to reconsideration and reopening for change of condition or mistake.

The jurisdiction of the deputy commissioner is a continuing one, and this being so, then the order or award of August 26, 1931, did not vest rights with any finality as to the appellants, particularly where the rights of the workman Clark had never been accorded consideration to which he was entitled.

In the instant case no award is made by the Act of Congress; the law does not direct payment of money by one private person to another. If no merit was found in the claim, appellants would not have been injured, and if there was merit in the claim of malpractice and total disability, but discovered afterwards, there was merit in the claim before the total disability and malpractice were discovered.

The appellants have been deprived of some money by one order of the commissioner, and it is proposed to deprive them of more by another order. It is not questioned that the first deprivation was in pursuance of due process of law. The only question is whether the second also is by due process of law. The reopening proceeds on a set of facts BROUGHT TO LIGHT after the order was made, and results in a new order. What the law does is to lend its aid to the en-

forcement of a claim. The original law imposed limitations of time within which an action could be brought and after which it could not be brought. The law in question merely extends the TIME. The amending law substitutes a different time limit and in effect retains jurisdiction in the commissioner to reopen the order which had previously been made.

Appellants had all the rights reserved to them that they had originally; they had all legal safeguards they had originally. The only thing the law does is to change the time. Due process of law is specifically reserved to them in the act extending the time. The procedure was to be in accordance with the sections of the general law and the act in question even provides that any new order that is made should not affect previous payments of compensation for which the appellants are to receive due credit.

In connection with this phase of the act when the Circuit Court of Appeals for the 9th District had the instant case before it as reported in 95 Fed. (2nd) 203, at page 206, it stated:

> "It is suggested that the private act in question is not amendatory of, or supplementary to, the Longshoremen's and Harbor Workers' Compensation Act, and that no remedy by appeal or at law is given in it; hence, appellants may not be entitled to the benefit of the judicial protection afforded by the general statute. The suggestion is purely fanciful. The private act directs a review of the earlier order and the making of a new compensation order in accordance with the procedure prescribed in section 19, notwithstanding

the provisions of section 21 and section 22 of the act, as amended by Act May 26, 1934, §5, 33 U.S.C.A. §922. *It is obvious that Congress intended the general act to be controlling in all respects, except that finality is not to be attributed to the earlier order* under section 21, *and that a review is to be accorded notwithstanding the expiration of the time limitation* imposed by section 22, as amended, 33 U.S.C.A. §922. * * * And see *Independent Pier Co., et al., v. Norton, Deputy Commissioner*, D. C., 12 Fed. Supp. 974, supplemental opinion."

The legislature has the power to extend the period of an existing statute of limitations.

In the case of *Campbell v. Holt* (115 U. S. 620) it was held that the repeal of a statute of limitations on personal debts does not, as applied to debtor, the right of action against whom is already barred, deprive him of his property in violation of the 14th Amendment of the Constitution of the United States.

The Court said:

"The distinction between the effect of the Statutes of Limitation in vesting rights to real and personal property, and its operation as a defense to *contracts*, is well stated in *Jones v. Jones*, 18 Ala. 248.

"* * * The Court, in its opinion, says this 'will be determined by settling what is the nature of a plea of the Statute of Limitations. Is it a plea that settles the *right* of a party on a contract or judgment, or one that bars the *remedy?* Whatever diversity of opinion there may be among jurists on this point, we think it well set-

tled to be a plea to the *remedy;* and consequently, that *lex fori* must prevail.' So well is this doctrine established, that many states of the union have made it a part of their Statute of Limitations, that when the action is barred by the law of a State in which defendants had resided, it shall also be a bar to an action in those States.

"There are numerous cases where a contract incapable of enforcement for want of a remedy, or because there is some obstruction to the remedy, can be so aided by *legislation* as to become a proper ground of a valid action; as in the case of a physician practicing without license, who was forbidden to compel payment for his service by suit. The statute being repealed which made this prohibition, he recovered in the court a judgment for the value of his services on the ground that the first statute only affected the *remedy. Hewitt v. Wilcox,* 1 Metcalf (Mass.) 154. Of like character is the effect of a repeal of the laws against usury, in enabling parties to recover on contracts in which the law forbade such recovery before the appeal. *Wood v. Kennedy,* 19 Ind. 68; *Welch v. Wadsworth,* 30 Conn. 149; *Butler v. Palmer,* 1 Hill 324; *Hampton v. Commonwealth,* 19 Harris, 329; *Baugher v. Nelson* (9 Gill. 304).

"In all this class of cases the ground taken is, that there exists a *contract,* but, by reason of no remedy having been provided for its enforcement, or the *remedy* ordinarily applicable to that class having, for reasons of public policy, been forbidden or withheld, the legislature, by providing a remedy where none exists, or removing the statutory obstruction to the use of the remedy,

enables the party to enforce the contract, otherwise unobjectionable.

"* * * It is much insisted that this right to defense *is a vested right*, and a right of property which is protected by the *provisions of the 14th Amendment.*

"It is to be observed that the word 'vested right' is nowhere used in the Constitution, neither in the original instrument nor in any of the Amendments to it.

"We understand very well what is meant by a vested right to real estate, to personal property, or to incorporeal hereditaments. But when we get beyond this, although vested rights may exist, they are better described by some more exact term, as the phrase itself is not one found in the language of the Constitution.

"We certainly do not understand that a right to defeat a just debt by the Statute of Limitations is a vested right, so as to be beyond legislative power in a proper case. The Statutes of Limitation, as often asserted and especially by this Court, are founded in public needs and public policy—are arbitrary enactments by the lawmaking power, *Tioga Railroad v. Blossbury & Corning R. R.*, 20 Wall. 137, 150. And other statutes shortening the period or making it longer, which is necessary to its operation, have always been held to be within the legislative power until the bar is complete. The *right* does not enter *into or become a part of the contract.* No man promises to pay money with any view to being released from that obligation by lapse of time. It violates no right of his, therefore,

when the legislature says, time shall be no bar, though such was the law when the contract was made. The authorities we have cited, especially in this court, *show that no right is destroyed when the law restores a remedy which had been lost.*

* * * * * * *

"We can understand a right to enforce the payment of a lawful debt. *The Constitution says that no state shall pass any law impairing this obligation.* But we do not understand the right to satisfy that obligation by a protracted failure to pay. We can see no right which this promissor has in the law which permits him to plead lapse of time instead of payment, which shall prevent the legislature from repealing that law, because its effect is to make him fulfill his honest obligations."

The appellants, at page 52 of their brief, have cited the case of *Danzer v. Gulf & Ship Island Ry. Co.*, 268 U. S. 633, which apparently holds that the statute of limitations goes both to the right and to the remedy. This case is utterly inapplicable because, 1st, it applies to claims pertaining to interstate commerce both the right and remedy of which are creatures of statute and to which is not applied the liberal construction of the statute such as is applied in favor of a longshoreman; and 2nd, because the Longshoremen's and Harbor Workers' Act is fundamentally, essentially, and primarily remedial legislation, as is evident from a long line of decisions of the United States Supreme Court. It is interesting to note, however, that the *Danzer* case, among other things, cites the

case of *Campbell v. Holt* (115 U. S. 620), which latter case is relied upon and has been cited by the claimant, and which case distinguishes it on the ground that the *Campbell v. Holt* case "belonged to the class where statutory provisions fixing the time within which suits must be brought to enforce an existing cause of action are held to *apply to the remedy only.*" In the case at bar in the absence of any statute, appellee had a right of action against the employer and the remedy was a thing apart from the right of action and the time within which the remedy could be prosecuted could be changed and modified by statute without affecting the right of action itself. Appellants state at page 55 of their brief that the act creates a new substantive right, and yet a most superficial examination of the statute reveals that *no new right is created* and that no defense is taken away save and except the defense based upon the bar of the limitation.

At page 57 appellants state the legislation is an attempted usurption by Congress of judicial functions. It is obvious that the Longshoremen's and Harbor Workers' Act is the creature of Congress, and under the great weight of authority Congress can legislate the remedies and modify the limitation period.

In *Crowell v. Benson*, 285 U. S. 22 (76 L. ed. 598) this Court in passing on the constitutionality of the original Longshoremen's and Harbor Workers' Act and the objection taken thereto under the Fifth Amendment, speaking through Chief Justice Hughes, stated, at page 53, quoting Chief Justice Taney:

"The power of Congress to change the mode of proceeding in this respect in its courts of admiralty, will, we suppose, hardly be questioned. The Constitution declares that the judicial power of the United States shall extend to 'all cases of admiralty and maritime *jurisdiction.*' But it does not direct that the courts shall proceed according to ancient and established forms, or shall adopt any other form or mode of practice. The grant defines the subjects to which the jurisdiction may be extended by Congress. But the extent of the power as well as the mode of proceeding in which that jurisdiction is to be exercised, * * * are subject to the regulations by Congress. * * * In admiralty and maritime cases there is no such limitation as to the mode of proceeding, and Congress may therefore in cases of that description * * * modify the practice of the court in any other respect that it deems more conducive to the administration of justice."

At page 47 the court states,

"The use of the administrative method for these purposes, assuming due notice, proper opportunity to be heard, and that findings are based upon evidence, falls easily within the principle of the decisions sustaining similar procedure against objections under the due process clauses of the Fifth and Fourteenth Amendments."

The *Danzer case*, 268 U. S. 633, at 636 and 637, recites as follows:

"We need to reexamine the doctrine of Campbel *v. Holt*, 115 U. S. 620, as it is plain that the case does not apply. That was an action on a

contract for the recovery of money. By a state statute of limitations, the right of action had been barred. The statute was repealed before the action was commenced. It was held that the action could be maintained and that such repeal did not deprive the debtor of his property without due process of law in violation of the Fourteenth Amendment. The decision rests on the conception that the obligation of a debtor to pay was not destroyed by lapse of time, and that the statute of limitations related to the remedy only, and that the removal of the bar was *not unconstitutional.* * * * That case belonged to the class where statutory provisions fixing the time within which suit must be brought to enforce an existing cause of action are held to apply to the *remedy* only."

The case of *Campbell v. Holt*, 268 U. S. 633, is also cited in the case of *Central Hanover Bank & Trust Co. v. United Traction Co.*, 95 Fed. (2nd) 50, 55, in which case the following appears:

"The statute has been considered as merely suspending the creditor's remedy, not as extinguishing debtor's obligation;"

In the case of *Reppel v. Board of Liquidation* (1935) 11 Fed. Supp. 799, at page 804, the following appears:

"It can hardly be said that the change in personnel in the sewerage and water board affects any vested rights of the bondholders, but, if it be conceded for the purpose of discussion that it does, the answer is plain. Vested rights are not mentioned in the United States constitution and

> they cannot be asserted against the police power of the state. In the exercise of police power, a state legislature may pass a law which divests rights vested by law, provided its effect be not to impair the obligation of a contract."

The above case cites the case of *Campbell v. Holt* (*supra*).

Referring to the power of Congress to provide an additional remedy, the case of *Phillips v. Commissioner*, 283 U. S. 589, beginning at 600, states:

> "It is urged by *amici curiae* that the method of assessment and collection permitted by section 280 (a) (1) cannot be applied where, as in the case at bar, the transfer of assets, upon which the transferee's liability is based, occurred prior to the enactment of the revenue act of 1926; and moreover, as it applied retroactively to said transfer, the section would be unconstitutional. *The power of Congress to provide an additional remedy for the enforcement of existing liabilities is clear.*"

In 20 Amer. Dec. 391, in the note entitled—"Statutes of limitation when constitutional,"—the law, in part, is stated as follows:

> "Where there is an existing statute of limitations, the legislature may pass an amendatory act which either shortens or extends the time within which an existing cause of action may be barred. Such statute is not unconstitutional, as being in conflict with the provisions of the United States Constitution, which forbid the states to pass laws impairing the obligation of contracts," etc. (numerous cases cited).

Under the general power to enact and repeal statutes of limitation is included the power to suspend,

Pearsall v. Kenan, 28 Am. Rep. 336,

and such suspension does not impair the obligation of contracts or violate any other constitutional right.

Searle v. Adams, 89 Am. Dec. 598;
Wardlaw v. Buzzard, 94 Am. Dec. 148;
Luter v. Hunter, 98 Am. Dec. 494.

In the recent case of the Washington State Supreme Court—*Crabb v. Dept. of Labor & Industries*, 186 Wash. p. 505, it was held that although a claim was invalid unless filed within one year from the date of the injury, the court ordered the claim considered by *adopting liberal rules as to the Workmen's Compensation Act.*

Another case in principle, in law and in fact in point with the case before the court, is *Mattson v. Department of Labor & Industries of Wash.*, 293 U. S. 151; 76 Law Ed. 251, 29 P. (2nd) 675. This case was appealed from the decision of the Supreme Court of the State of Washington to the Supreme Court of the United States (176 W. 345).

The applicable facts are these:

Until March 15, 1927, a claimant could claim further compensation without limit as to time on account of an aggravated condition and while this law was *in effect* claimant was injured. On March 15, 1927, an amendment was made to the above law limiting the time to claim for aggravation *within three years*

after the compensation was terminated. However, about five years after the compensation was terminated, claimant filed a claim for aggravation and contended the three-year amendment was unconstitutional, claiming that he had a "vested right"—that it was property—because at the time of his injury the law as it was then in force permitted him to file a claim for aggravation on account of said injury without limit, and that "its enforcement may not be abolished or limited consistently with the due process clause of the *Fourteenth Amendment* of the Federal Constitution."

The Supreme Court of the United States, speaking through Mr. Justice Roberts, stated:

> "The section under attack, merely *limits* the time for the assertion of the right, affects the *remedy* only, and that in a manner not unreasonable, arbitrary or oppressive. Such a limitation of time within which appellant's *remedy* must be pursued does not deprive *him of due process*. The judgment is affirmed."

The discriminatory argument is not true. Congress is not conferring any new substantive rights upon the employee, and Congress does not take away any available defenses of the employer, based upon the merits. The single thing that it does is to confer the right to a re-examination of a case based upon conditions existing at the time of the first award, but the discovery of which occurred subsequent to the entry of the original award. The Act does not attempt or purport to classify the rights of the parties.

Appellants contend that because the order did not involve "fraud," it must stand. But what the order does involve is a MISTAKE and MALPRACTICE, which is tantamount to fraud in so far as the validity of the order is concerned if it were challenged on that ground.

On page 22, appellants contend the act is "tyrannical legislation—it establishes government by edict or discriminatory order and discards government by law." On the contrary, the legislation is in harmony with the spirit and intent of the Longshoremen's and Harbor Workers' Act, *i. e.*, to award compensation to those entitled thereto, and an examination of the challenged statute patently reveals that every legal safeguard reserved to appellants under the Longshoremen's and Harbor Workers' Act of March 4, 1927, is retained for the protection of appellant under the special statute here attacked. The procedure was to be governed by the general law on the subject. Credit for any previous compensation was specifically directed to be allowed, and the only element affected was that the limitation of time provided under the general law was to be waived, not for the purpose of awarding or granting to the appellee any new right, but to determine his right to compensation on account of the injuries sustained and the malpractice performed, but discovered after the Commissioner felt that technically he had lost jurisdiction under the general act.

It does not discard government by law; it does not

change the procedure. The only element affected in any way is the time.

By analogy the instant case is identical with the case of *Williams v. Norris*, 12 Wheaton's Reports (U. S.) 117, because in that case the effect of the private act was not to give any new title and thereby impair the obligation of a contract but to modify the evidence with which one's *incipient* title could be established. In the present case no new right was conferred or taken away. But the limitation of the statute upon the time within which a re-examination of the case could be made was extended. The opinion was writen by Chief Justice Marshall of the United States Supreme Court. In that case the title of one Norris depended upon a private act in his favor and it was claimed to be repugnant to the Constitution. The act provided in part as follows:

> "Be it enacted, etc., that the commissioner of West Tennessee be, and he is hereby authorized to issue to E. Norris certificates or warrants to 2280 acres, on which no warrants or grants were issued, provided, Norris produced evidence sufficient to the said commissioner that the consideration for said entries was paid, and that no warrant or grant ever issued on said entries."

When the act was passed, a patent had been granted to plaintiff in error on land covered by entry of Norris. The Court at page 125 said that:

> "If its (the act's) effect was to annul that patent, and to give new title to Norris, the act would come within the decision of this court in

the case of *Fletcher v. Peck*, as a law impairing the obligation of contracts. * * * If the purchase money was paid, the entry was valid. If not paid, the entry might be void or only voidable. * * * It is a question for the legislature and courts of the state, and its decision the one way or the other would not be repugnant to the constitution of the United States."

At page 127 the court continues:

"Had the claim of Ezekiel Norris been decided by the commissioners, acting under the general law, it probably would never have been contested. What difference is there, so far as respects its constitutionality, between the act passed in his particular case, and the act containing a general reference of all cases of the same description to the commissioner?"

* * * * * * *

"If this be correct, *if the legislature might have dispensed with this testimony in a general law, why may it not be dispensed with in a particular law, where its effect on the cause is precisely the same, as if it had been general?* There are, undoubtedly, great and solid objections to legislation for particular cases. But *these objections do not necessarily make such legislation repugnant to the constitution of the United States.*"

" 'The act for the relief of Ezekiel Norris,' did not authorize the commissioner to grant him a certificate or warrant on his entry, unless he should prove that the purchase money had been paid. The laws had preserved such entries, and consequently an act to enable the proprietor of

one of them to prosecute his claim, is not necessarily an act impairing the obligation of a contract."

"The question whether the judgment of the commissioner was conclusive evidence that the purchase money had been paid, is entirely distinct from the constitutionality of the law, and the decision of the state court upon it cannot be revised in this court."

If Congress could have extended this time by a general law, "why," quoting from *Williams v. Norris, supra*, "may it not be dispensed with in a particular law where its effect on the cause is precisely the same as if it had been general?"

On page 48 of appellants' brief, they contend the act deprives them of substantive rights and is not merely procedural. *But claimant had an incipient right of action capable of being carried into an award. The law does not confer any new rights.* In *Williams v. Norris, supra*, the legislature had a right to determine what should be the evidence of payment that would be received. In the case at bar the Congress had the right to determine the time within which remedy should be pursued. In the *Norris* case, if a general law had been passed it is doubtful if the statute would ever have been challenged. This is true in the case at bar. It is the form they object to—both cases relating to the time within which the remedy had to be pursued. In the *Norris* case the legislature could have dispensed with testimony by a general law. But the fact that they sought to do so by a

particular law did not affect its constitutionality although undesirable in form. The analogy and the same reasoning holds true in the case at bar. In the case at bar the law did not authorize the commissioner to make any award until the claimant should prove under the general and established law that he had a right to an award. Under the law his claim was a matter of record and consequently an act to enable him to prosecute his claim is not necessarily an act impairing the obligation of a contract. In both cases the question was: Whether the private act affected only the remedy. By their own argument the fact that the Fourteenth Amendment was not in effect at the time of the decision rendered in the *Norris* case does not make any difference because the Fifth Amendment was in effect. They argue *it has the same effect as the Fourteenth.* Appellants contend, at page 51, that Private Act No. 445 is not purely remedial and does not purport to modify procedure whereby an existing cause of action may be enforced. Indeed it does not go that far. It does not modify any procedure. *It merely lengthens the time within which the same procedure may be made available.*

On page 23, appellants flourish in generalities viewing with alarm the dangers of political meddling, etc., if the prese: : Act is sustained. But this seems absurd, when we consider that Congress in the first instance passed the Longshoremen's and Harbor Workers' Act, and likewise passed the second act, and Congress is the only constituted body that can do so.

It is again repeated that all of appellants' argu-

ments about due process of law fail to consider the true purpose of the law that was passed, a close examination of which reveals that not a single defense based on the merits of the controversy has been taken away or any right granted of any kind, character, or degree enlarging, or changing the rights of the parties save and except the single circumstance that the barrier of the time limit granted for reopening has been modified in order to have a hearing upon the merits because of conditions which existed at the time of the first award, but which were subsequently discovered.

On page 26 of appellants' brief, we can accept the definitition of due process of law in *Hurtado v. California*, 110 U. S. 516, 28 L. Ed. 232 (1884), and still find nothing objectionable in the law being challenged in the case at bar. This is NOT A SPECIAL RULE for a particular person or a particular case because reserved and preserved to the appellant was its right to a hearing before award based upon proper inquiry with a judgment rendered only after trial. No penalty was invoked; no confiscation occurs. No judgment was reversed. There is no act transferring one man's estate to another. It does not arbitrarily enforce any edict upon one person or his property by merely permitting a re-examination of the facts of the particular case. Appellants are claiming a vested right in the time within which a remedy may be pursued.

In *Bechtel v. United States*, 101 U. S. 597, 25 Law. Ed. (U. S.) 1019, the following appears:

"A remedial statute is to be liberally construed with reference to the purpose of its enactment."

The remedial nature of the legislation in question is sufficient to save it from constitutional objection. What is due process of law depends upon the circumstances varying with the subject matter and the necessities of the situation. *Moyer v. Peabody*, 212 U. S. 78, at 84. In the note in 24 Lawyers' Edition, 436, due process of law is described as follows:

"Due process of law is the regular administration, through courts of justice, by a timely and regular course of proceeding to judgment and execution. As a rule, it includes parties, regular pleadings and a trial, according to the settled course of proceedings."

In 6 R.C.L., Sec. 442, p. 446, the following appears on due process of law:

"In General.—The essential elements of due process of law are notice, and an opportunity to be heard and to defend in an orderly proceeding adapted to the nature of the case. In fact one of the most famous and perhaps the most often quoted definition of due process of law is that of Daniel Webster in his argument in the Dartmouth College case, in which he declared that by due process of law was meant 'a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial'."

In *Imhoff-Berg Silk Dyeing Co. v. United States*, 43 Fed. (2nd) 836, at 843, the following is helpful:

"Plaintiff's final contention that, inasmuch as the statute had run at the time of the collection,

Congress was then and is still without the constitutional power to remove the bar, cannot be sustained. *It is well settled that there is no vested right to rely upon a statute of limitation to defeat a debt or other personal obligation; the Legislature which imposed the bar may remove it.*"

In the *Campbell v. Holt* case, *supra*, the cause was based upon a debt; in this case, on a just claim, although unliquidated. Statutes of limitations are founded in public needs and public policy and are necessary and arbitrary enactments by the lawmaking power. The right here claimed to be affected is similar to the right affected in that case. No man promises to pay money with any view to being released from that obligation by lapse of time. It violates no rights of his. No right is destroyed when the law restores a remedy which had been lost. We do not understand the right to satisfy an obligation, or the right to withhold proper compensation, by a protracted failure to pay. No one has a right in law which permits him to plead lapse of time instead of payment, which shall prevent the legislature from repealing that law, because its effect is to make him fulfill his honest or proper obligations.

Also, in 6 R.C.L., Sec. 281, p. 294, the following appears:

"*Modification of Procedure.*—The prohibition as to the passage of *ex post facto* laws has no application to changes which relate exclusively to the *remedy* or *mode of procedure. A person has no vested right in any particular remedy,* and he cannot insist on the application to the trial of

his case, whether civil or criminal, of any other than the existing rules of procedure. *Statutes making changes in the remedy or procedure are always within the discretion of the law-making power*, and are valid so long as they do not deprive the accused of any substantial right, or conflict with specific and applicable provisions of the federal constitution."

In the case of *Smolen v. Industrial Commission, et al.*, 324 Ill. 32, 154 NE. 441, a statute was passed extending the time for review of an award on the ground that the employee returned to work. The Court said at page 443:

"The repeal of a law cannot impair vested rights which have been acquired under it and the passage of a new law cannot by its retrospective operation impair such vested rights, but the legislature has the right to change the limitation laws of the state with respect to existing causes of action and to change the laws of procedure, * * *."

"* * * The rule is well settled that the changing of a remedy for the enforcing of a contract does not impair its obligation. The remedies which the law affords to enforce contracts constitute no part of the contracts themselves. *Chapin v. Billings*, 91 Ill. 539; *Gage v. Caraher*, 125 Ill. 447, 17 NE. 777."

In the case of *Otis Elevator Co. v. Industrial Commission*, 134 NE. 19, 302 Ill. 90, it was held that where a statute confers a vested right such right cannot afterwards be altered or amended so as to destroy it, but if a change in the law affects only the

remedy or procedure, all rights of action are governed thereby, without regard to whether they accrued before or after such change, and without regard to whether suit has previously been instituted or not, unless there is a saving clause as to the existing litigation.

In *Hulbert, et al. v. Clark, et al.*, 11 N. Y. Supp. 417, 28 NE. 638, the following appears at page 638:

> "The statute of limitations does not, after the prescribed period, destroy, discharge, or pay the debt, but it simply bars the remedy thereon. The debt and the obligation to pay the same *remain*, and the arbitrary bar of the statute alone stands in the way of the creditor seeking to compel payment. The legislature could repeal the statute of limitations, and then the payment of a debt, upon which the right of action was barred at the time of the repeal, could be enforced by action, and the constitutional rights of the debtor are not invaded by such legislation. It was so held in *Campbell v. Holt*, 115 U. S. 620, 6 Sup. Ct. Rep. 209. It was held in *Johnson v. Railroad Co.*, 54 N.Y. 416, that the statute of limitations acts only upon the remedy; that it does not impair the obligation of a contract, or pay a debt, or produce a presumption of payment, but it is merely a statutory bar to a recovery; and so it was held in *Quantock v. England*, 5 Burrows 2628, and so it has ever since been held in the English courts."

Sampeyreac and Stewart v. U. S., 7 Peters U. S. 222, held that an act which provides for orderly procedure to be followed by court action is constitutional even though it creates a new remedy for a

right previously passed on because such legislation is merely remedial and there is no vested right in the *mode of procedure.*

At page 237 of said case the following appears:

> "The ground upon which it has been argued that the act of 1830 is unconstitutional, is, that a right had become vested in Stewart before the act was passed; and that the effect and operation of the law is to deprive him of a vested right. To determine the force and application of of this objection, it becomes necessary to look at the claim, as it now appears, before the court."

On page 238 the following appears:

> "No appeal was taken within the year; and the question is, whether the United States, by neglecting to appeal, have lost their right; and if not, whether the remedy provided by the act of 1830, to assert that right, is in violation of the constitution."

At page 239, the following appears:

> "But, considering the act of 1830 as providing a remedy only, it is entirely unexceptionable. It has been repeatedly decided in this court, that the retrospective operation of such a law forms no objection to it. Almost every law, providing a new remedy, affects and operates upon causes of action existing at the time the law is passed. The law of 1830 is in no respect the exercise of judicial functions. It only organizes a tribunal with powers to entertain judicial proceedings."

In *Luria v. United States*, 231 U. S. 9, at 25, *Mr. Justice Van Devanter*, speaking for the court, said:

"Nor is it a valid objection to such legislation that it is made applicable to existing causes of action, as is the case here, the true rule in that regard being well settled in Cooley's Constitutional Limitations. 7th Ed. 524, in these words: 'It must also be evident that a right to have one's controversies determined by existing rules of evidence is not a vested right. These rules pertain to the remedies which the state provides for its citizens; and generally in legal contemplation they neither enter into and constitute a part of any contract, nor can be regarded as being of the essence of any right which a party may seek to enforce. Like all other rules affecting the remedy, they must therefore at all times be subject to modification and control by the legislature; and the changes which are enacted may lawfully be made applicable to existing causes of action, even in those states in which retrospective laws are forbidden. For the law as changed would only prescribe rules for presenting the evidence in legal controversies in the future; and it could not therefore be called retrospective even though some of the controversies upon which it may act were in progress before."

Point C—State Cases

POINT C cites six cases, which, in the absence of any authority from this Court favorable to appellants on the point raised, are claimed to support appellants' views.

First, the cases cited are all state cases, all involving state statutes, and are in each case decided under the special terms of the State constitution. Where gen-

eral language is used in the decision, the court had in mind the state constitution and its prohibitions. How any analogy can be drawn between these cases and an Act of Congress, is not clear. Nor are the cited cases all in point.

Riggs v. Lehigh Portland Cement Co., 131 N.E. 231, concerned a statute which sought to amend the compensation act by allowing a minor child to recover compensation in spite of the remarriage of its mother which remarriage, the old act said, terminated all rights. No statute of limitations or other procedural matter was involved. Also, a person who previously could not recover sought to recover under an Act which did not state or indicate that it should be retroactive. The case at bar so obviously intends retroaction that the analogy is again lost.

At p. 232, the court, in the *Riggs* case, states:

> "To give to the amendment the effect desired by appellant would be to confer on the child a substantive right which she did not possess at the time of the injury and death of her father * * *. *There is nothing in the amendment to indicate that the Legislature intended that it should affect awards previously made.* The conclusion we have reached on this phase of the matter makes it unncessary to discuss the question whether or not the contrary conclusion would conflict with certain constitutional limitations."

The *Casieri's* case, 190 NE. 118 (Mass.) is decided in a jurisdiction where judicial opinion is not too certain on the character of function performed by the

Compensation Board. The case cited seems to hold that the decisions of that tribunal "and partake of the nature of a court's decisions". But the Chief Justice (Rugg) in *Ahmed's* case, 179 NE. 684 (278 Mass. 180), held for the same court that "The present statute does not apply to judicial proceedings in the courts. It relates solely to the peculiar class of controversies as they arise under the Workmen's Compensation Act before a purely administrative tribunal." The *Casieri* case says:

> "The statutes questioned pass beyond the line of legislation with regard to procedure, and, so far as retroactive, must be held to be inoperative."

The *Ahmed case* says:

> "Since said chapter 208 relates solely to costs and procedure, it applies to all cases after its effective date."

Of course, even if the *Casieri* case actually overrules the *Ahmed* decision, it is still concerned only with a state statute, governed by state constitutional limitations. These cannot bind this Court in the present case, nor is the decision analogous in any respect.

Also, *Casieri's* case is not a case involving a special statute—but a general statute, and merely holds that a statute which seeks further hearings as to whether the later incapacity of petitioner employee is the result of injury for which he received compensation, is unconstitutional, and simply holds that an award is property and final and that it is in effect

a judicial decision. This is contrary to the Federal cases involving compensation laws and conflicts directly with the *Ahmed* case, *et al.* (Mass.) 179 NE. 684, and numerous state decisions.

The case of *Decker v. Pouvailsmith Corp.*, 252 N.Y. 1; 168 NE. 442, in its facts is, of course, not analogous to the case at bar, as it also involves a state statute and state constitutional limitations. Its language also limits its holdings, and indicates that if a case more nearly analogous to the case at bar would come before it, the ruling would be favorable to such an act. Judge Pound, concurred in by Judge Cardozo, said:

> *"Such a statute might be made retroactive without impairing any constitutional rights of the employee.* When no property rights have become vested by lapse of time the Legislature may remove the statutory bar when it confers 'an immunity which is contrary to all prevailing ideas of justice.' *Robinson v. Robins Dry Dock & Repair Co.*, 238 N.Y. 271, 279, 144 NE. 579, 36 A.L.R. 1310. It was not until our decision in the *Noreen* case, *supra*, in 1921, that claimant learned that he had mistaken his remedy. The Legislature might properly grant relief in such cases. The rights of minors under the Workmen's Compensation Law might well be the object of legislative solicitude. *But the Legislature must make clear its purpose to make the statute retroactive* and applicable to the case at bar. *Robinson v. Robins Dry Dock & Repair Co., supra. It has failed to indicate that the amended section should apply to cases where the statute*

had already run. To say that such was its purpose is to indulge in speculation. The Court may not give a retroactive effect to a statute to revive claims already barred under the old section unless the legislative purpose is defined by express language and by necessary inference."

In the *Decker* case also, *no claim* of any kind for compensation was filed *within a year*, as required, after the accident.

In fact New York has decided where the retroactive intent was clear, in the case of *Montgomery v. Seneca Iron & Steel Company*, 257 N.Y. Supp. 556, that the remedy may be revived. In this case an accident occurred on August 1, 1929, and the state statute provided:

"The Board may, within one year from the date of accident, upon its own motion, or on application of any party in interest, reclassify a disability upon proof that there has been a change in condition, or that the previous classification was erroneous and not in the interests of justice."

In 1931, three years were substituted for the one year, and the case of the claimant was reopened. The Court said:

"It is conceded that subdivision 6-A is retroactive (* * *) and that the 1931 amendment is applicable to accrued as well as future claims."

* * * * * * * *

"No right is destroyed when the law restores a remedy which has been lost. *Campbell v. Holt*, 115 U. S. 620, 628, 6 S. Ct. 209, 213, 29 L. Ed. 483. See, also, *Robinson v. Robins Dry Dock &*

Repair Co., 238 N. Y. 271, 144 NE. 579, 36 A. L.R. 1310."

The act in the case at bar clearly calls for the retroactive effect and the implication from the language of the New York Court is that if such were the case before them, the act would be within the legislative power.

The case of *Roles Shingle Co. v. Bergeron, et al.*, 19 Pac. (2nd) 94 (Ore.), was decided on the basis of a direct violation of Art. I, Sec. 20 of the State Constitution that "no law shall be passed granting to any citizen or class of citizens privileges and immunities which, upon the same terms, shall not equally belong to all citizens." The workman was killed and his sister filed a claim for compensation with the accident commission, alleging dependency. The commission denied the claim. She took an appeal to the Circuit Court, which found in her favor, and the commission appealed to the Supreme Court of the State, which reversed the Circuit Court because appeal was not taken in 60 days as provided by law. A few years later legisature passed a bill authorizing and directing a reopening of the case and claim, to give a full hearing on merits, etc. In Oregon the constitution also provides that "The judicial power of the state shall be vested in one supreme court and in such other courts as may from time to time be created by law." Art. 7, Sec. 1, Constitution of Oregon.

The Court further stated:

"The State Industrial Accident Commission

> is not a court within the meaning of the said section. It is simply the administrative medium through which the state functions in regard to employees who are entitled to compensation for injuries received in the course of their employment under the Workman's Compensation Act. *These functions are not judicial.*"

The Court then simply holds that "the legislature cannot annul or set aside the final judgment of a court of competent jurisdiction." Such holding is not remotely analogous.

In *State v. Industrial Accident Board*, 23 Pac. (2) 253 (Mont.), claimant in the first instance failed to serve written *notice of accident*, as required, and therefore the statute giving continuing jurisdiction to its orders did not apply because the order was not such as might be subject to changing conditions, but was a final order and therefore rendered subject thereof *res judicata*.

The Court said, however:

> "As we have indicated, this court in the *Mulholland* case, *supra*, recognized that some of the orders of the board are final, and others are, in a sense, interlocutory. The latter type of order contemplates the so-called continuing jurisdiction of the board. This continuing jurisdiction, as the court said, quoting from an Ohio case (*Industrial Commission v. Dell*, 104 Ohio, 389, 135 N.E. 669, 34 A.L.R. 422) "is to give a Board or tribunal the power to *modify* or change a judgment or order to meet changed conditions, or to *do justice* in the light of newly dis-

covered evidence, or to correct an order which was made as the result of *fraud* or *imposition*, or *an order which would not have been made if certain facts later discovered had then been known to exist.*"

"Therefore, it is fair to say that the proposition of *continuing jurisdiction to enable the board to meet new or changed conditions is a well established priciple of law in this state.* * * *." But the "order specifically, absolutely and permanently denied Magelo any relief or compensation because of *his failure to file his notice* under the provisions of Section 2933, *Supra.*"

The case of *State v. Industrial Accident Board*, 23 Pac. (2nd) 253 (Mont.), also turns on a violation of the express terms of Sec. 26, Art. 5, of the State Constitution of Montana. The language of the court is instructive at page 256:

"The Legislature in enacting Section 2899 and Section 2933, as amended, placed limitations upon the time within which compensation claims might be prosecuted. By simply amending or abolishing these sections and giving their act a *retrospective effect*, they could have accomplished their purpose, without affecting the discrimination achieved by chapter 85, Laws of 1933."

Thus the court holds that a retroactive act affecting the time limit on prosecuting compensation claims, would not be offensive to any constitutional provisions. Since Congress is not inhibited as is the State from enacting special acts, it follows that the act in the case at bar is supported by this authority rather than attacked.

Casparis v. Fidelity Union Casualty Co., 65 SW. (2) 404 (Texas), cited by appellants is quite involved and it is unnecessary to encumber this brief with a detailed statement of the case since a reading of it will immediately make its irrelevancy apparent. Furthermore, a loose statement is made in the case that the legislature may modify or extend an existing remedy, but cannot revive a remedy already barred. This, of course, is directly contrary to the Federal cases on this subject and the weight of authority and only goes to show the admitted divergence of opinion and conclusion between states in treating questions involving workmen's compensation. In passing it might be well to state also that in the cited case the

> "Trial court's ruling that the board had jurisdiction to review its previous order was based on holding that the amendment * * * was retroactive,"

and the court said:

> "In this we cannot concur."

So again in the instant case, the retroactive application of the statute is not doubtful, but is expressly provided for, thereby necessarily removing the cited case as any authority for appellant's various contentions.

Also the case of *Casparis v. Fidelity Union Co.*, 65 SW. (2nd) 404 (Tex.), is decided on questions other than the constitutional violation claimed. The dicta near the close of the opinion is based upon citation of another state case which holds that the controlling

feature is the State constitution giving equal protection to the same extent as the Federal Constitution. Such authority is not even persuasive since the inhibition of the Fourteenth Amendment does not apply to Congressional legislation which is here involved.

Act Should Be Construed In Favor of Constitutionality

Furthermore, it needs no citation of authority that an Act of Congress is to be construed so as to maintain its constitutionality if possible.

In 6 R.C.L., Sec. 77, p. 78, the following appears:

> "It is an elementary principle that where the validity of a statute is assailed and there are two possible interpretations, by one of which the statute would be unconstitutonal and by the other it would be valid, the court should adopt the construction which would uphold it."

In 6 R.C.L., Sec. 82, p. 83, the following appears:

> "*Conclusiveness of Federal Decisions as to Federal Questions.*—It is a fundamental principle of the constitutional system of government of the United States that the decisions of the federal supreme court are final and authoritative declarations of the proper and correct construction to be placed on the constitutions and laws of the United States and as to whether a state law contravenes any provision of the national constitution."

The presumption is always in favor of the constitutionality of an act of Congress.

In 6 R.C.L., Sec. 98, p. 97, the following appears:

> "The courts in a long series of cases have

enunciated the general *principle that the presumption is in favor of the constitutionality of a statute.* * * * It has been declared that in no doubtful case should the courts pronounce legislation to be contrary to the constitution; *that to doubt the constitutionality of a law is to resolve such doubt in favor of its validity;* that all statutes are of constitutional validity unless they are shown to be invalid; *and that the courts will resolve every reasonable doubt in favor of the validity of the enactment.* It has been said that every intendment is in favor of its validity, and that it must be presumed to be constitutional unless its repugnancy to the constitution clearly appears, or is made to appear beyond a reasonable doubt; * * *."

The question of the justice or injustice of a statute is for the legislature and not the courts, as pointed out in 6 R.C.L., Sec. 106, p. 107, wherein it states:

"Legislative acts within the power of the legislative body are not subject to revision or control by the courts, on the ground of inexpediency, injustice or impropriety, or because they are contrary to the principles of natural justice or are based on conceptions of morality with which the courts may disagree, or even because they create unjust differences not prohibited by the constitution. The justice or injustice of statutory provisions is a question for the legislature, not for the court."

In 6 R.C.L., Sec. 109, p. 110, the following appears:

"A general presumption exists in favor of the good faith of all law-making bodies; that is, primarily the courts will assume that the law-mak-

ing body considered the effect of legislation on the constitutional rights of the citizen, * * * and that laws are passed in good faith in order *to remedy by proper regulations some evil not* reached or corrected by previous legislation. Courts cannot impute to the legislative department a disregard of any fundamental principle of civil liberty."

CONCLUSION

In conclusion, therefore, it is respectfully submitted that, as stated by the Circuit Court of Appeals in its decision, the general act is controlling in *all respects* except as to the finality of the earlier order.

As far as due process of law is concerned under the act in question, the insurance company and the carrier are entitled to judicial review, and to all of the protection afforded by the Longshoremen's and Harbor Workers' Act. The same procedure applies to claimant as applies to any and all claimants. All of the elements of due process of law as pointed out heretofore, are not violated in any respect. The claimant, as a matter of right, is found to be entitled to compensation. Congress, which originally enacted this remedial legislation, has the power to restore to the claimant his remedy. The Deputy Commissioner, by regular and proper procedure in accordance with all of the provisions of the Longshoremen's and Harbor Workers' Act, makes an award which is rightfully due claimant. Congress in pursuance of its power to pass remedial legislation, merely extended the time. No substantive right has been encroached upon. No one is damaged. Had the claimant been able to pre-

serve his remedy before it was cut off, the insurance company and the employer would have paid to the claimant the compensation found now to be due to him. But since it was claimed to be lost and since the deputy commissioner felt he was powerless to review the award under the existing Longshoremen's and Harbor Workers' Act without further congressional authority, the Congress of the United States restored the remedy and gave the deputy commissioner the authority to proceed in accordance with the general act which controls in all respects. How can the insurance company and the carrier say that their property is being taken without due process of law, when as a matter of right the compensation was the property of claimant in the first instance?

The subsequent finding of the deputy commissioner that claimant was totally disabled from the date of his original injuries conclusively establishes claimant's *right* to the compensation. Is the insurance company and the carrier to be enriched at the expense of the claimant's so-called *loss of remedy* by *lapse* of *time?* Can it be said that the insurance company and carrier obtain a vested right in their unjust enrichment at the expense of an ignorant workman and by reason of the damaging mistake at the hands of both the physician and surgeon and the deputy commissioner who relied on the physician's mistake? Congress had the power in the first instance to pass the Longshoremen's and Harbor Workers' Act. This legislation was *remedial* and the elements of due process of law were incorporated in the original act. The

amendatory act in question, being a mere extension of time, is also remedial and provides for the necessary elements of due process of law. The award is made after proper notice and hearing on all issues, and should be sustained. In any event, as the courts consistently have held, all doubts as to constitutionality under the law should be resolved in favor of the constitutionality of the act and in favor of the longshoreman.

Also, with reference to the act in question, (1) Congress can enact special legislation of the private character here involved; the *Norris* case is authority for that; (2) and this private act does not affect any vested right of appellants, since the mere suspension of the limitation merely revives a dormant right and does not create a new one. The *suspension in all cases* being *inclusive* of the *power to suspend in one*, Congress is no more depriving appellants of due process than if the act passed had applied to all cases barred by the compensation statute of limitations.

Clearly, the issue is: *Had this Act provided suspension in all cases barred by the statute limiting reopening for change of condition or mistake, would appellants have been able to sustain a complaint of constitutional violation?* No, because the mere extension of time for enforcing the right, is not unconstitutional on good authority. If Congress could have passed a general statute suspending the limitation, why not a particular statute? Are appellants dammaged any more by the private character of the act? Of course not. As employers, they should feel that

Congress acted charitably in not passing a general act which might have covered other cases where the bar has already dropped. And the wisdom of Congress in passing the Clark Act is, of course, not to be questioned by the Court, although ample ground for the exercise of its power is shown by the record.

We have assumed, of course, only for the sake of argument, that a constitutional question is involved. The record shows a state of facts which on their face disclose such a set of circumstances as would justify sustaining the claim solely by a reasonable construction of the Compensation Act, Sec. 22 of Chapter 509, Laws of 1927 (U. S. Compiled Stats.). The bar is properly set up against a workman who has been negligent in pursuing his remedy, but against one who because of malpractice by a physician paid by appellants, was kept ignorant of his condition until after the lapse of the statutory period, it would require a strained reading of the language of the section to hold that the bar is complete. The section contemplates application by the workman, and without knowledge of the facts, of course, it is beyond his power to apply within the time limit fixed. The universal and well settled rule of liberal construction of the compensation act, demands that this Court allow the claim of the workman Clark, without regard to the confusion raised by appellants as to constitutional questions.

As stated in *Union Stev. Corp. & Liberty Mutual Insurance Co. v. Norton, Deputy Commissioner*, 98 Fed. (2) 1012 (1938), *supra*,

"Further reference to the contentions of the respective parties would be fruitless. IT IS OUR DUTY TO CONSTRUE THE ACT LIBERALLY AND IN SUCH WISE AS TO EFFECT THE PURPOSE INTENDED BY CONGRESS. * * *."

"THE LONGHOREMEN'S AND HARBOR WORKERS' ACT * * * IS INTENDED TO AFFORD RELIEF TO PERSONS WHO INCUR INJURIES IN THE COURSE OF THAT EMPLOYMENT." The appellee in this case WAS INJURED IN THE COURSE OF HIS EMPLOYMENT AND, as stated by the Deputy Commissioner, "THAT AS THE RESULT OF THE INJURY SUSTAINED THE CLAIMANT WAS WHOLLY DISABLED FROM JANUARY 17, 1931, TO AND INCLUDING JANUARY 5, 1939, * * *; THAT THE TOTAL DISABILITY OF THE CLAIMANT CONTINUED AT THE TIME OF THE HEARING ON JANUARY 5, 1939; * * *." (R. 17, 18). As stated, the courts have decreed liberality of construction in favor of the longshoremen, and rightfully so. Liberality is not an empty word. It does not mean, as appellants are endeavoring to do, to look for technical loopholes to defeat an award of compensation to one entitled to that relief under the Act of Congress. It means that when the injured longshoreman is confronted with a situation as is now presented, the technicalities of the law and the strategy and strict construction of the legal mind shall give way in favor of liberal justice

and consideration for the injured longshoreman. If anything, a construction of the compensation act which would bar this workman under such circumstances would be in clear violation of the Fifth Amendment, depriving him of the right to compensation without due process of law.

Respectfully submitted,

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